



MASSACHUSETTS DEPARTMENT OF REVENUE CORPORATE EXCISE

NEXUS; PUBLIC LAW 86-272,
SOLICITATION; COMPANY CARS

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FACTS:

Widget, Inc., a foreign corporation with no offices in Massachusetts and not qualified to do business here, has three resident sales representatives who solicit orders for Widget but have no authority to accept or approve them. Customers must order directly from Widget's headquarters in another state; Widget then ships its products to the customer.

Widget provides each representative with product samples, used solely for demonstration purposes, and a car owned by Widget and registered here. The cars are used when visiting customers and are garaged at the representatives' homes. Widget has no other contacts with Massachusetts.

ISSUE:

Does Widget's use of personal property in Massachusetts subject it to the Massachusetts corporate excise?

DISCUSSION: A foreign corporation owning or using any or all of its capital, plant or other corporate property in Massachusetts in a corporate capacity is generally subject to the corporate excise. G.L. c. 63, § 39(3). The power of any state to tax foreign corporations is, however, limited by federal law to those corporations whose activities within the state exceed "solicitation," as defined by Public Law 86-272 (15 U.S.C. § 381). Under Public Law 86-272, a corporation's activities do not exceed solicitation if

- (1) the corporation's business activity within the state is limited to the solicitation of orders for tangible personal property;
- (2) all orders are approved outside the state; and
- (3) all orders are shipped from outside the state.

Id. Whether a corporation's activities are limited only to solicitation depends on all the facts and circumstances. If a corporation uses a small amount of personal property in Massachusetts solely to solicit orders for its products, it will not be subject to the Massachusetts corporate excise if the other requirements of Public Law 86-272 are also met.

Here, Widget has no contacts with Massachusetts apart from a small number of cars and product samples used solely to solicit orders to be shipped to Massachusetts from outside the state. Widget's activities thus do not exceed "solicitation," and Widget is not subject to the Massachusetts corporate excise.

D O R D I R E C T I V E

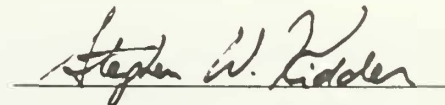
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DIRECTIVE: Widget's use of personal property in Massachusetts does not subject it to the corporate excise because the use made of the property does not exceed the "solicitation" of orders within the meaning of Public Law 86-272.

This Directive follows Letter Ruling 88-7, which revoked Letter Ruling 84-1 and modified Letter Ruling 86-10.

REFERENCE: G.L. c. 63, § 39(3); Public Law 86-272 (15 U.S.C. § 381).

September 30, 1988



Stephen W. Kidder
Commissioner of Revenue

This Directive represents the official position of the Department of Revenue on the application of the law to the facts as stated. The Department and its personnel will follow this Directive, and taxpayers may rely upon it, unless it is revoked or modified pursuant to 830 CMR 62C 01(5)(e). In applying this Directive, however, the effect of subsequent legislation, regulations, court decisions, Directives, and TIRs must be considered, and Department personnel and taxpayers may rely upon this Directive only if the facts, circumstances and issues presented in other cases are substantially the same as those set forth in this Directive.